IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5199 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPORATION THROUGH MUN.COMMISSIONER

Versus

SHETH LALBHAI DALPATBHAI BHARATIYA SANSKRUTI VIDHYA BHAVAN

Appearance:
MR KS JHAVERI for Appellant
MR PV NANAVATI for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of Order: 25/01 /2002

C.A.V. JUDGMENT

(Per : MR.JUSTICE B.C.PATEL)

#. The Ahmedabad Municipal Corporation (hereinafter to be referred to as "the Corporation"), being aggrieved by the order dated 31.7.98 made by the Small Cause Court, Ahmedabad in Municipal Valuation Appeal No. 4970 of 1994 has preferred this appeal.

#. The present respondent who was appellant before the Small Cause Court, Ahmedabad preferred an appeal against the demand made in the bill with regard to special conservancy charges and water tax in respect of the premises namely Final Plot No. 89,102-P of Navrangpura area, Ahmedabad. It was contended by the respondent herein before the Small Cause Court that the appeal premises is a non-residential premises and is being used as Research Centre only. It was further contended that the premises is supplied water by putting water meter and therefore, water can be taxed only according to water meter. With regard to conservancy charges, it was pointed out that hardly 5 to 6 persons are permanently working in the premises and very limited number of people are visiting the premises. In these facts and circumstances of the case, it was submitted by the present respondent that the conservancy tax cannot be charged at a special rate at which club house, theater, school etc. are being charged. It was prayed that the appeal be allowed by holding that the conservancy tax be charged at an ordinary rate and water tax be deleted from the tax bill as water charges are paid by the respondent in accordance with the reading of the meter.

#. Before the Small Cause Court, Ahmedabad, it was contended by the present appellant that no objections were filed and therefore, the appeal was incompetent. It was further contended that against the bill issued by the Corporation the respondent could have preferred an appeal before the Municipal Commissioner and having not preferred, the appellant has no right to challenge by approaching the Small Cause Court by preferring an appeal against the bill issued by the Corporation. It was further contended that as contemplated under Section 406 of the Bombay Provincial Municipal Corporations Act (hereinafter to be referred to as "the BPMC Act"), 75% amount of the tax bill was not deposited and therefore, the appeal ought to have been dismissed by the Small Cause Court.

#. Before considering the submissions made by the learned counsel appearing for both the sides, a note is required to be taken of the fact that the present respondent preferred Municipal Valuation Appeal No.

15286 of 1992 which was decided by the Small Cause Court and had come to the conclusion that the water tax is required to be deleted from the bill and conservancy tax is required to be charged at an ordinary rate in respect of the appeal premises.

#. Before the Small Cause Court, the present respondent produced registration certificate of the Trust vide exh. 16 and Memorandum of Association. It was also pointed out that the respondent has given effect of the previous judgment, but the respondent has failed in giving effect for the year 1993-94. It was pointed out that even for the year 1986 in Municipal Valuation Appeal No. 15152 of 1986, the Small Cause Court has fixed conservancy charges at an ordinary rate. The Small Cause Court deleted the amount of water tax and the respondent having not challenged the judgment delivered by the Small Cause Court in Municipal Valuation Appeal Nos. 15152/86 and 15286/92, there was no earthly reason for the Corporation to make any changes in the bill contrary to the order of the Court. Before the Small Cause Court, on behalf of the appellant, the learned counsel submitted that the assessment is made at reasonable rate and it is proper. With regard to the judgment, it was contended that the previous judgment is not applicable and the respondent having not preferred an appeal by following the provisions contained in Section 406 of the BPMC Act, the appeal is to be dismissed.

#. Chapter XI of the BPMC Act provides the provisions for municipal taxation. The Corporation can impose the taxes namely property taxes under Section 129 and under Section 141-B and the tax on vehicles, Boats and animals. Sub-clause (2) of Section 129 refers to other taxes and the same being not the subject matter, it is not discussed and referred. The Court is only concerned with the property tax. The property taxes are to be levied in accordance with the provisions contained in Chapter under the heading "property tax". The Corporation can levy water tax, conservancy tax and general tax. Sub-clause (c) of Section 129 provides for general tax. In the instant case, the dispute relates to the tax other than the general tax and therefore, the aspect with regard to the general tax is not considered. So far as the water tax is concerned, sub-clause (a) and so far as the conservancy tax is concerned, sub-clause (b) of Section 129 are required to be referred here. The same are as under.

"129. Property taxes of what to consist and at what rate leviable.

For the purposes of sub-section (1) of section 127 property taxes shall comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinafter provided, be levied on buildings and lands in the City:-

(a) a water tax at such percentage of their rateable value as the Corporation shall deem reasonable, for providing a water supply for the city.

Provided that the Corporation shall with the previous sanction of the State Government, fix the minimum amount of such tax to be levied and may fix different minima for different classes of properties:

Provided further that the minimum amount of such tax tobe levied shall,-

(i) in respect of any one separate holding of land or of any one building (not being premises used exclusively for residential purpose) or of any one portion of a building which is let as a separate holding, and which is not used exclusively for residential purpose, be not less than five rupees per mensem for the official year commencing on the first day of April, 1983;

(ii) in respect of any premises used exclusively for residential purpose, be not less than three rupees per mensem for any official year commencing on the first day of April, 1993;

(b) a conservancy tax at such percentage of their rateable value as will in the opinion of the Corporation suffice to provide for the collection, removal and disposal, off all excrementitious and polluted matter from privies, urinals and cess-pools and for efficiently maintaining and repairing the municipal drains constructed or used for the recption or conveyance of such matter, subject however to the provisos that the minimum amount of such matters.

Provided that corporation shall, with the previous sanction of the State Government, fix the minimum amount of such tax to be levied and may fix different minima for different classes of properties.

Provided further that the minimum amount of such tax to be levied in respect of any one portion of building or of any one portion of a building which is let as a separate holding shall be not less than two rupees per mensem for any official year commencing on the first day of April, 1993 and that the amount of such tax to be levied in respect of any hotel, club, industrial premises or other legal premises may be specially fixed under section 137.

Provided also that while determining the rate of such tax under section 99 or 150, the corporation may determine different rates for different classes of properties."

The aforesaid provision contained in Section 129 of the BPMC Act inter alia provides that the property tax shall comprise of different types of taxes which shall "subject to the exceptions, limitations and conditions which are provided, be levied on the buildings and lands. The levy of property tax, being subject to the exceptions, limitations and conditions which are provided under Sec. 129, clearly means that the assessing authority has to levy the tax after taking these exceptions, limitations and conditions into consideration. Other provision indicates as to in what manner water tax or the conservancy tax is to be levied.

Section 134 provides for fixed charges and agreements for payments. The said section reads as under.

"134. Fixed charges and agreements for payments in lieu of taxes for water supplied.

(1) The Commissioner may-

(a) in such cases as the Standing Committee shall generally approve, instead of levying the water tax in respect of any

premises liable thereto, charge for the water supplied to such premises by measurement at such rate as shall from time to time be prescribed by the said Committee in this behalf or by the size of the water connection with the municipal main and the purposes for which the water is supplied at such rates as shall from time to time be prescribed by the Corporation.

(b) in such cases as the Standing Committee shall generally approve, compound with any person for the supply of water to any premises for a renewable term of one or more years not exceeding five, on payment of a fixed periodical sum in lieu of the water tax or charge by measurement or by the size of the water connection which would otherwise be leviable from such person in respect of the said premises.

(2) The Standing Committee may, for the cases in which the Commissioner charges for water by measurement or by the size of the water connection under clause (a) of sub-section (1), from time to time prescribe such conditions as it shall think fit as to the use of the water and as to the charge to be paid for water-consumed whilst a meter is out of order or under repair, and for the cases in which a composition is made under clause (b) of the said sub-section the said Committee may prescribe such conditions as to the use of the water as it shall think fit:

Provided that no condition prescribed under this sub-section shall be in consistent with the Act or rules or bye-laws.

(3) A person who is charged for water by measurement or by the size of the water connection or who has compounded for a fixed periodical sum shall not be liable for payment of the water tax but any sum payable by him on account of water shall, if not paid when it becomes due, be recoverable by the Commissioner as if it were an arrear of water tax."

Reading the aforesaid provisions, it is very clear that when the water tax is to be collected by the Commissioner, the tax can be levied only in the manner

aforesaid and not in any other manner. In view of the specific provision, the appellant was not in a position to point out any material that there is any error committed by the trial court. Before the Small Cause Court, when a specific contention was raised about the tax to be charged in accordance with the reading of a meter, instead of pointing out to the court the manner in which the tax is to be collected, the appellant herein took up the contention that the appeal is not maintainable and against the bill, appeal cannot be preferred. Despite specific contention, nothing was pointed out to the trial court that the water tax is not to be levied in consonance with the reading of the water meter. Even before this Court, nothing was placed on record to indicate that the respondent herein is getting water facility without the water meter. Under the circumstances, it is not possible to accept the contention raised before us on behalf of the appellant.

#. So far as the conservancy tax is concerned, Section 137 is relevant provision which reads as under.

"137. Conservancy tax may be fixed at special rates in certain cases.

(1) The Commissioner may, whenever he thinks fit, fix the conservancy tax to be paid in respect of any hotel, club, stable, industrial premises or other large premises at such special rate as shall be generally approved by the Standing Committee in this behalf, whether the service in respect of which such tax is leviable be performed by human labour or by substituted means or appliances:

Provided that if the Corporation shall have determined for any official year any different rate of a conservancy tax for any class of properties to which any of the properties referred to in this sub-section belongs, the Commissioner shall not, without the previous approval of the Corporation, fix, for such official year or part thereof, the conservancy tax to be paid in respect of any property belonging to such class for which such different rate may have been determined by the Corporation, at any other different rate under this sub-section.

(2) In the case of premises used solely for public purposes and not used or intended to be

used for purposes of profit or for residential or charitable or religious purposes in respect of which the conservancy tax is payable by Government the Commissioner shall fix the said tax at a special rate approved as aforesaid.

(3) In any such case the amount of the conservancy tax shall be fixed with reference to the cost or probable cost of the collection, removal and disposal, by the agency of municipal conservancy staff, of excrementitious and polluted matter from the premises."

Sub-section (3) of Section 137 makes it clear that the amount of conservancy tax fixed must be with reference to the cost or probable cost of the collection, removal and disposal by the agency of municipal conservancy staff, of excrementitious and polluted matter from the premises. The tax at a special rates is approved by the Standing Committee. It is clear that in view of the number of visitors visiting a particular site or a particular place, provision is made on account of heavy load of collection, removal and disposal of excrementitious and polluted matter from the premises. In the present case, it is specifically pleaded that the premises is a Research Centre and only 5 to 6 persons are permanently working in the premises and a very few people are visiting the premises. In view of the specific case pleaded, it was for the Corporation to place the material before the Small Cause Court to show that the contention raised is not true. Even it could have been considered from the facilities provided in the building. However, the appellant - Corporation has not placed any material even in that regard so as to make out a case that the facts pleaded by the respondent herein cannot be accepted. The premises are within the limits of the Corporation and are constructed with the approval of the plans. It is not the case of the Corporation that the building is constructed without the approval of the plans. Therefore, the Corporation was aware about the facilities provided. The Corporation has not stated anything in this regard before the Small Cause Court which makes it clear that bills are issued arbitrarily or are issued without application of mind.

#. Section 137 of the BPMC Act refers to conservancy tax in respect of any hotel, club, stable, industrial premises or other large premises at such rate as shall be generally approved by the Standing Committee. Eating house, hotel, industrial premises and lodging house are defined in sub-clauses (18), (25A), (28A) and (32) of

Sec.2. The words "large premises" are not defined but the word "premises" is defined in sub-section (46) of Section 2 of the Act which reads as under.

> "(46) "premises" includes messuages, buildings and lands of any tenure whether open or enclosed, whether built on or not and whether public or private;"

The objection raised by the appellant that the Small Cause Court has erred in deciding the appeal is required to be considered not only with reference to the provisions of water tax and conservancy tax but also considering the decision of the Division Bench of this Court in the case of Municipal Corporation of City of Ahmedabad vs. Moti Apartment Owners Association [35 (2) GLR 1662]. Question is raised by the Corporation in every matter that every year being separate year, irrespective of the decisions of the Court, it is open for the Corporation to tax the property differently. The Division Bench after considering the decisions in the case of Devan Daulat Rai Kapoor etc. etc. v. New Delhi Municipal Committee and another, [AIR 1980 SC 541] and in the case of Dr. Balbir Singh and others etc. v. M/s. M.C.D. and others etc. [AIR 1985 SC 339] decided the First Appeal No. 829 of 1983 and other appeals in the case of Municipal Corporation of City of Ahmedabad v. Oriental Fire & General Insurance Co. Ltd., [1994 (2) GLR 1498] and in para 73 the Court pointed out as under.

> "73. There can be no doubt that according to Rule 21, the entries of the earlier year can be adopted for the subsequent years. Furthermore, every rateable value which is fixed, against which appeal is not filed or every appellate order, which becomes final, has to be given effect to. We are, however, unable to agree with the contention of the learned Counsel that, in the example given above by him, for the assessment year 1982-83 and 1982-83 and onwards, a notice under Rule 15(2) has to be issued, because for the year 1981-82, the appellate Court had reduced the rateable value to Rs. 1,500/= after entries for 1982-83 and 1983-84 have been adopted. In every example, which is given, it is contemplated that the entry for 1981-82 was finalised after the issuance of a valid notice under Rule 15(2). As long as that entry of Rs. 5000/- for the year 1981-82 remains, the same could be adopted by the Commissioner in the subsequent years 1982-83 and 1983-84. If after

such adoption for the years 1982-83 and 1983-84, the appellate Court, in respect of the assessment year 1981-82 allows the appeal and reduces the rateable value, the decision in the said appeal can only be regarded as being given for the assessment year 1981-82. In taxation, each year is to be regarded as distinct and separate. The Act does not postulate that the appellate decision for one year will, ipso facto, be regarded as a decision for the other years as well. As long as appeals have been filed before the Small Causes Court, or to the High Court, the assessment cannot be regarded as having become final."

After the decision, the Division Bench in case of Moti Apartments Owners Association (supra) pointed out in para 6 as under.

"6. One point however, needs to be reiterated, whether the rateable value so fixed in the case of self-occupied property can be revised at different intervals. The answer to this question is very obvious and is in the negative. The reason for this is very simple. The rateable value of the self-occupied premises has to be fixed either by determining hypothetical rent on the basis of the reasonable return of the cost of construction and the cost of land or on the basis of properties which are let and which are similar in nature. Once determination takes place by applying the principle, the rateable value cannot possibly undergo any change. As long as the premises remain in self-occupation, the rateable value for the succeeding years will have to be that which was determined in accordance with law for the first year. The only occasion when the Corporation or the Municipality will get a right to revise the rateable value will be, if the owner occupant makes additions or alterations or incurs any capital expenditure on that property itself. It has to be clearly understood that carrying out minor repairs or white-washing cannot be regarded as a capital expenditure so as to permit enhancement of rateable value. A question may also arise whether a rateable value can be increased in case of change of ownership. Here again the rateable value is relatable to the property in question and if the premises continued to be the self-occupied property by the new owner, change in the ownership would not and

should not ipso facto result in the increase of the rateable value. It is only if further additions or alterations are undertaken and capital expenditure incurred by the new owner, can there be any change in the rateable value of self-occupied premises."

Thus, in absence of increase in rateable value, there is no question of making changes.

#. On behalf of the Corporation, it was seriously contended that the appeal before the Small Cause Court being not tenable, it ought to have been dismissed. Section 406 of the B.P.M.C. Act refers to appeals when and to whom to lie. The said section reads as under.

"406. Appeals when and to whom to lie.

(1) Subject to the provisions hereinafter contained, appeals against any rateable value or tax fixed or charged under this Act shall be heard and determined by the Judge.

(2) No such appeal shall be entertained unless-

(a) it is brought within fifteen days after the accrual of the cause of complaint:

(b) in the cause of an appeal against a rateable value a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of:

(c) in the case of an appeal against any tax in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of:

(d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within fifteen days after he first received notice of such amendment and his complaint has been disposed of;

(e) in the case of an appeal against a tax,

or in the case of an appeal made against a rateable value, the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, upto the date of filing the appeal, has been deposited by the appellant with the Commissioner:

Provided that where in any particular case the judge is of the opinion that the deposit of the amount by the appellant will cause undue hardship to him, the judge may in his discretion, either unconditionally or subject to such conditions as he may think fit to impose, dispense with a part of the amount deposited so however that the part of the amount so dispensed with shall not exceed twenty five per cent of the amount deposited or required to be deposited."

On behalf of the Corporation, reliance was placed on Sub-clause (c) of Sub-section (2) of Section 406 of the BPMC Act and it was submitted that unless there was complaint before the Commissioner against the demand and the complaint has been previously disposed of, the appeal ought not to have been entertained. It is required to be noted that the appeal was not preferred against the rateable value, but appeal was preferred only for imposition of conservancy and water tax. There is no dispute with regard to fixation of gross ratable value of the property.

##. On behalf of the respondent, it was contended that sub-rule (2) of Rule 39 of Chapter VIII, known as Taxation Rules of Appendix IV is a provision to be considered. The said sub-rule reads as under.

"39(2) Every such bill shall specify the period for which, and the premises, property, occupation, vehicle, boat, animal or thing in respect of which the tax is charged and shall also give notice of the time within which an appeal may be preferred against such tax and of the consequences of default in payment as hereinafter provided."

It was contended that even the bill issued clearly mentions that the appeal if is to be preferred, then the same should be filed within a period of 15 days as per the provisions contained in Sections 406 and 407 of the BPMC Act before the Small Cause Court. But such appeals

can be filed only after the deposit of the entire tax amount. In view of sub-rule (2) of Rule 39 referred to hereinabove, if the Commissioner has issued instructions in the bill in consonance with the aforesaid sub-rule, then it cannot be said that the appeal is not maintainable as no complaint was made to the Commissioner against the demand and such complaint has been disposed of. In view of this, it is difficult to accept the contention raised by the Corporation that the appeal before the Small Cause Court was not tenable. Section 406(1) of the BPMC Act contemplates an appeal against the rateable value or tax fixed or charged under the Act. It is open to the assessee not to challenge the rateable value but to challenge the tax fixed or charged on other ground or relating to other maters. In the case of Oriental Fire & General Insurance Co. Ltd. (supra), the Division Bench was concerned with the question whether the rateable value can be challenged by filing an appeal only against the bill which is sent demanding the tax which is determined. The Court while summarizing, observed that-

> "... an appeal cannot be filed against a bill for the purposes of challenging the rateable value if complaint against a proposed fixation of rateable value had not been filed though opportunity had been given."

The Hon'ble Chief Justice Mr. B.N. Kirpal (as His Lordship then was) explained earlier views expressed in the case of Oriental Fire & General Insurance Co. Ltd. and in the case of Gujarat Vidhya Sabha v. Municipal Corporation of City of Ahmedabad [1995 (1) GLR 419] that -

> "... it is clear in our mind that the observations in Oriental Fire and General Insurance Company's case that no appeal could be filed against the bill levying the tax was only in so far as in the said appeals the challenge which was to be raised refers to the rateable value. In other words, the challenge to the rateable value has been provided for independently under Sec. 406 and for which the condition provided by Sec. 406(2)(b) has to be satisfied and the same cannot be circumvented by filing an appeal against the tax bill and challenge the rateable value."

The Division Bench after considering Section 129 pointed out as under.

"The aforesaid provision contained in Section 129 of the BPMC Act inter alia provides that the property tax shall comprise of different types of taxes which shall "subject to the exceptions, limitations and conditions which are provided, be levied on the buildings and lands. The levy of property tax, being subject to the exceptions, limitations and conditions which are provided under Sec. 129, clearly means that the assessing authority has to levy the tax after taking these exceptions, limitations and conditions into consideration. Other provision indicates as to in what manner water tax or the conservancy tax is to be levied."

The assessing authority, therefore, was duty bound to follow the provisions of this Section while making the assessment. Despite the decision rendered by the Small Cause Court earlier, without any change, it is not open to levy or to tax the property in a different manner. Yet, in the instant case, the appellant issued bills for water tax and conservancy tax which it could not have taxed in the manner in which it taxed.

##. From what is stated hereinabove, it emerges that the Trust was called upon to pay the water tax and conservancy tax earlier for which Municipal Valuation Appeals were preferred and the Small Cause Court held that the conservancy tax is to be taxed at an ordinary rate and the amount of water tax was ordered to be deleted. Despite these decisions, the Corporation called upon the respondent to pay the water tax and conservancy tax which it could not have taxed in the manner in which it taxed in the bill and called upon the assessee to pay the sum of Rs. 3,23,884.87 ps. by adding in the property tax bill the amount of water tax and conservancy tax and interest thereon in flagrant violation of the provisions contained in the Act and the provisions provided in Appendix IV. Instead of correcting the errors, the decision of the Small Cause Court is challenged on the ground that the appeal was not maintainable. Though as per the bill, the assessee specifically pointed out that the appeal can be preferred in the Small Cause Court, a contention was raised before the Small Cause Court as well as before this Court that there is no provision for preferring an appeal and that the appeal can be entertained only only after making a complaint to the Commissioner and after its disposal.

##. In view of the provisions which have been discussed

hereinabove, the water tax and conservancy tax were required to be assessed as per the order of the Court and as per provisions and having not done so, we find no error committed by the Small Cause Court so as to interfere in the instant case. The present appeal therefore, stands dismissed with costs.

[B.C. PATEL, J.] [S.D. DAVE, J.]

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